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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

SETH WITTNER,

Defendant.

Case No: **2:17-CR-00005-KJD-NJK**

**PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

Plaintiff United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and RICHARD ANTHONY LOPEZ, Assistant United States Attorney, the defendant SETH WITTNER and the defendant's attorney, MICHAEL D. PARIENTE, ESQ., submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A) and (B).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and SETH WITTNER (the defendant). This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

1 The Plea Agreement sets forth the parties' agreement regarding criminal charges
 2 referenced in the Plea Agreement and applicable sentences, fines, restitution, and forfeiture. It does
 3 not control or prohibit the United States or any agency or third party from seeking any other civil
 4 or administrative remedies directly or indirectly against the defendant.

5 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

6 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to a
 7 Criminal Information charging the defendant with one count of:

8 **Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B).**

9 The defendant also agrees to the forfeiture of the property and the imposition of the
 10 forfeiture of the property as set forth in the Plea Agreement and the Forfeiture Allegations of the
 11 Criminal Information.

12 B. Waiver of Trial Rights. The defendant acknowledges that he has been advised and
 13 understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain rights
 14 guaranteed to all defendants by the laws and the Constitution of the United States. Specifically,
 15 the defendant is giving up:

16 1. The right to proceed to trial by jury on all charges, or to a trial by a judge if
 17 the defendant and the United States both agree;

18 2. The right to confront the witnesses against the defendant at such a trial and
 19 to cross-examine them;

20 3. The right to remain silent at such a trial, with assurance that his silence could
 21 not be used against him in any way;

22 4. The right to testify in his own defense at such a trial if he so chooses;

23 5. The right to compel witnesses to appear at such a trial and testify in the
 24 defendant's behalf; and

1 6. The right to have the assistance of an attorney at all stages of such
2 proceedings.

3 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty plea
4 after he has entered it in court.

5 D. Additional Charges. The United States agrees not to bring any additional charges
6 against the defendant arising out of the investigation in the District of Nevada that culminated in
7 this Plea Agreement and based on conduct known to the United States except that the United States
8 reserves the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C.
9 § 16.

10 **III. ELEMENTS OF THE OFFENSES**

11 A. The elements of Possession of Child Pornography under 18 U.S.C.
12 § 2252A(a)(5)(B) are:

13 1. The defendant knowingly possessed child pornography, as defined by 18
14 U.S.C. § 2256(8), or material which contained such child pornography;

15 2. Such items of child pornography or material containing such child
16 pornography had been mailed, shipped, or transported in interstate or foreign commerce, by any
17 means, including by computer; and,

18 3. The defendant knew that such item(s) or material constituted or contained
19 child pornography as defined in 18 U.S.C. § 2256(8).

20 **IV. FACTS SUPPORTING GUILTY PLEA**

21 A. The defendant will plead guilty because he is, in fact and under the law, guilty of
22 the crimes charged.

23 B. The defendant acknowledges that if he elected to go to trial instead of pleading
24 guilty, the United States could prove his guilt beyond a reasonable doubt and establish its right to

1 forfeit the specified property. The defendant further acknowledges that his admissions and
2 declarations of fact set forth below satisfy every element of the charged offenses.

3 C. The defendant waives any potential future claim that the facts he admitted in this
4 Plea Agreement were insufficient to satisfy the elements of the charged offenses.

5 D. The defendant admits and declares under penalty of perjury that the facts set forth
6 below are true and correct:

7 1. In January of 2015, Homeland Security Investigations (HSI) Las Vegas
8 initiated an online peer-to-peer investigation into the possession of child pornography from an
9 Internet Protocol address in use at the defendant's home address.

10 2. On June 12, 2015, HSI executed a federal search warrant authorizing the
11 search of the property and seized digital devices belonging to the defendant.

12 3. The defendant admits that forensic analysis of two of the devices located
13 approximately 41 video files of child pornography, including multiple videos involving
14 prepubescent male and female children performing sex acts with adults and other prepubescent
15 children and at least one video involved sadistic or masochistic conduct involving a prepubescent
16 female child. One video file located on one of the defendant's digital devices depicts a fully nude
17 prepubescent girl under the age of 12 performing oral sex on an adult male. The adult male
18 manipulates the young girl's head and ejaculates into the young girl's mouth. Another video file
19 (over 5 minutes in duration) depicts a partially nude prepubescent girl under the age of 12
20 performing oral sex on an adult male. The adult male also vaginally penetrates the young girl with
21 his erect penis and ejaculates on the young girl's face. Yet another video file depicts a young girl
22 who appears to be between 5 and 6 years old. The young girl is handcuffed and partially nude. The
23 young girl is vaginally penetrated with a sex toy and anally penetrated by an adult male's fingers.
24 An adult male performs oral sex on the young girl.

1 4. The defendant admits that: (1) he knew the 41 video files referenced above
2 contained child pornography; (2) he knowingly possessed that child pornography using the digital
3 devices listed in Section X; and (3) he obtained that child pornography using the Internet, which
4 is a facility of interstate commerce.

5 5. The defendant admits that the property listed in Section X is (1) any visual
6 depiction described in Title 18, United States Code, Section 2252A, or any book, magazine,
7 periodical, film, videotape, or other matter which contains any such visual depiction, which was
8 produced, transported, mailed, shipped or received in violation of Title 18, United States Code,
9 Section 2252A(a)(5)(B) and (2) any property, real or personal, used or intended to be used to
10 commit or to promote the commission of Title 18, United States Code, Section 2252A(a)(5)(B)
11 or any property traceable to such property, and is subject to forfeiture pursuant to Title 18, United
12 States Code, Section 2253(a)(1) and (a)(3).

13 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

14 The facts set forth in Section IV of this Plea Agreement shall be admissible against the
15 defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the defendant does
16 not plead guilty or withdraws his guilty pleas, the facts set forth in Section IV of this Plea
17 Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting
18 any evidence, argument or representation offered by or on the defendant's behalf. The defendant
19 expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use of
20 the facts set forth in Section IV of this Plea Agreement.

21 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

22 A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that
23 the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing
24 Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are

advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Offense Level Calculations. The parties stipulate and agree to the following calculation of the defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the Court, and agree that the parties will not seek to apply any other specific offense characteristics, enhancements or reductions:

Count 1: Possession of Child Pornography, 18 U.S.C. § 2252A(a)(5)(B):

Base Offense Level, USSG § 2G2.2(a)(1):	18
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Enhancements:

Material Depicted Prepubescent Minor(s), USSG § 2G2.2(b)(2):	+2
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Sadistic or Masochistic Conduct USSG § 2G2.2(b)(4):	+4
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Use of a Computer USSG § 2G2.2(b)(6):	+2
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600 or More Images USSG § 2G2.2(b)(7)(D):	+5
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Total Offense Level	31
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Reductions:

Contingent Reduction for Acceptance of Responsibility USSG §3E1.1(a):	- 2
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Contingent Reduction for Government Motion for Acceptance of Responsibility USSG §3E1.1(b):	- 1
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Adjusted Offense Level:	28
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The parties agree and stipulate that no other specific offense characteristics will apply in this case. The defendant acknowledges that the statutory maximum sentence and any statutory

1 minimum sentence limit the Court's discretion in determining the defendant's sentence
2 notwithstanding any applicable Sentencing Guidelines provisions.

3 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG
4 § 3E1.1(a), the United States will recommend that the defendant receive a two-level downward
5 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing
6 a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts
7 establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully
8 admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false
9 or misleading information to the United States, the Court, Pretrial Services, or the Probation
10 Office; (e) denies involvement in the offense or provides conflicting statements regarding his
11 involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts
12 to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in
13 court; or (i) violates the conditions of pretrial release.

14 Under USSG § 3E1.1(b), the United States will move for an additional one-level downward
15 adjustment for acceptance of responsibility before sentencing because the defendant
16 communicated his decision to plead guilty in a timely manner that enabled the United States to
17 avoid preparing for trial and to efficiently allocate its resources.

18 These Sentencing Guidelines provisions, if applied, will result in a total offense level of 28
19 (if two-level adjustment and additional one-level adjustment both apply).

20 D. Criminal History Category. The defendant acknowledges that the Court may base
21 his sentence in part on the defendant's criminal record or criminal history. The Court will
22 determine the defendant's Criminal History Category under the Sentencing Guidelines.

1 E. Relevant Conduct. The Court may consider any counts dismissed under this Plea
2 Agreement and all other relevant conduct, whether charged or uncharged, in determining the
3 applicable Sentencing Guidelines range and whether to depart from that range.

4 F. Additional Sentencing Information. The stipulated Sentencing Guidelines
5 calculations are based on information now known to the parties. The parties may provide additional
6 information to the United States Probation Office and the Court regarding the nature, scope, and
7 extent of the defendant's criminal conduct and any aggravating or mitigating facts or
8 circumstances. Good faith efforts to provide truthful information or to correct factual
9 misstatements shall not be grounds for the defendant to withdraw his guilty plea.

10 The defendant acknowledges that the United States Probation Office may calculate the
11 Sentencing Guidelines differently and may rely on additional information it obtains through its
12 investigation. The defendant also acknowledges that the Court may rely on this and other
13 additional information as it calculates the Sentencing Guidelines range and makes other sentencing
14 determinations, and the Court's reliance on such information shall not be grounds for the defendant
15 to withdraw his guilty plea.

16 VII. APPLICATION OF SENTENCING STATUTES

17 A. Maximum Penalty. The maximum penalty for Possession of Child Pornography
18 under 18 U.S.C. § 2252A(a)(5)(B) is a 20 year prison sentence, a fine of \$250,000, or both. *See* 18
19 U.S.C. § 2252A(b)(2); 18 U.S.C. § 3571(b)(3).

20 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in
21 18 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum
22 sentence and any statutory minimum sentence limit the Court's discretion in determining the
23 defendant's sentence.

1 C. Parole Abolished. The defendant acknowledges that his prison sentence cannot be
2 shortened by early release on parole because parole has been abolished.

3 D. Supervised Release. In addition to imprisonment and a fine, the defendant will be
4 subject to a minimum term of supervised release of 5 years up to a maximum term of life. 18
5 U.S.C. § 3583(k). Supervised release is a period of time after release from prison during which the
6 defendant will be subject to various restrictions and requirements. If the defendant violates any
7 condition of supervised release, the Court may order the defendant's return to prison for all or part
8 of the term of supervised release, which could result in the defendant serving a total term of
9 imprisonment greater than the statutory maximum prison sentence of 20 years.

10 E. Special Assessment. The defendant will pay a \$100.00 special assessment per count
11 at the time of sentencing.

12 **VIII. POSITIONS REGARDING SENTENCE**

13 The United States will recommend that the Court sentence the defendant to a period of
14 confinement within the applicable Sentencing Guidelines range determined by the Court unless
15 the defendant commits any act that could result in a loss of the downward adjustment for
16 acceptance of responsibility. The defendant acknowledges that the Court does not have to follow
17 that recommendation. Notwithstanding its agreement to make the above recommendation, the
18 United States reserves its right to defend any lawfully imposed sentence on appeal or in any post-
19 conviction litigation.

20 The defendant may request a sentence below the Sentencing Guidelines range as calculated
21 in this Plea Agreement, and may seek a downward adjustment pursuant to 18 U.S.C. § 3553 from
22 any sentence the Court may impose.

1 **IX. RESTITUTION**

2 The defendant acknowledges that the conduct to which he is entering a plea is gives rise to
3 mandatory restitution to the victim(s) under 18 U.S.C. § 2259. The defendant agrees that for the
4 purpose of assessing such restitution, the Court may consider losses derived from the counts of
5 conviction as well as losses caused from dismissed counts and uncharged conduct in which the
6 defendant has been involved.

7 The United States and the defendant stipulate and agree that the child pornography images
8 received, distributed, or possessed by the defendant depicted images of victims being sexually
9 abused and further agree that a victim's knowledge that images of his or her abuse is being
10 disseminated and possessed by others cause certain victims to be re-victimized and has resulted in
11 harm that is distinct from that suffered from the actual contact physical sexual abuse, thus such
12 victims are harmed by the actions of the defendant.

13 In consequence of these factors, if the Government meets its burden under 18 U.S.C.
14 § 2259 and pursuant to *Paroline v. United States*, 134 S. Ct. 1710 (2014), the defendant agrees to
15 pay restitution in the amount of \$3,000.00 per victim, for any victim who may be identified through
16 the Child Victim Identification Program (CVIP) and/or Child Recognition and Identification
17 System (CRIS) and who requests restitution prior to sentencing, with the caveat that if the total
18 number of victims results in amount of restitution exceeding \$50,000.00 total, neither party shall
19 be bound by this subsection and the restitution amount will be litigated or renegotiated.

20 The defendant further acknowledges that his offense conduct occurred after May 29, 2015,
21 and unless the Sentencing Court finds the defendant to be indigent, an additional mandatory special
22 assessment of \$5,000.00 per count must be imposed pursuant to the Justice for Victims of
23 Trafficking Act of 2015 which amends 18 U.S.C. §3014.

X. FORFEITURE

The defendant knowingly and voluntarily:

A. Agrees to the District Court imposing the civil judicial forfeiture or the criminal forfeiture of:

1. Apple All In One, S/N WQ0272ZCDAS; and

2. WD External Hard Disk Drive, S/N WX41AA3F9787

(all of which constitutes property);

B. Agrees to the abandonment, the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property;

C. Abandons or forfeits the property to the United States;

D. Relinquishes all right, title, and interest in the property;

E. Waives his right to any abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture proceedings of the property (proceedings);

F. Waives service of process of any and all documents filed in this action or any proceedings concerning the property arising from the facts and circumstances of this case;

G. Waives any further notice to him, his agents, or his attorney regarding the abandonment or the forfeiture and disposition of the property;

H. Agrees not to file any claim, answer, petition, or other documents in any proceedings concerning the property;

I. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P. 7, 11, and 32.2, all constitutional requirements, including but not limited to, the constitutional due process requirements of any proceedings concerning the property;

J. Waives his right to a jury trial on the forfeiture of the property;

1 K. Waives all constitutional, legal, and equitable defenses to the forfeiture or
 2 abandonment of the property in any proceedings, including, but not limited to, (1) constitutional
 3 or statutory double jeopardy defenses and (2) defenses under the Excessive Fines or Cruel and
 4 Unusual Punishments Clauses of the Eighth Amendment to the United States Constitution;

5 L. Agrees to the entry of an Order of Forfeiture of the property to the United States;

6 M. Waives the right to appeal any Order of Forfeiture;

7 N. Agrees the property is forfeited to the United States;

8 O. Agrees and understands the abandonment, the civil administrative forfeiture, the
 9 civil judicial forfeiture, or the criminal forfeiture of the property shall not be treated as satisfaction
 10 of any assessment, fine, restitution, cost of imprisonment, or any other penalty the Court may
 11 impose upon the defendant in addition to the abandonment or the forfeiture;

12 P. Acknowledges that the amount of the forfeiture may differ from, and may be
 13 significantly greater than or less than, the amount of restitution; and

14 Q. Agrees to take all steps as requested by the United States to pass clear title of the
 15 property to the United States and to testify truthfully in any judicial forfeiture proceedings. The
 16 defendant understands and agrees that the property represents proceeds and/or facilitating property
 17 of illegal conduct and is forfeitable. The defendant acknowledges that failing to cooperate in full
 18 in the forfeiture of the property constitutes a breach of this Plea Agreement.

19 **XII. SEX OFFENDER REQUIREMENTS (SORNA)**

20 The defendant understands and agrees that under the Sex Offender Registration and
 21 Notification Act ("SORNA"), 42 U.S.C. § 16901 *et. seq.*, he must register as a sex offender and
 22 keep the registration current in each of the following jurisdictions: (1) where the defendant resides;
 23 (2) where the defendant is an employee; and (3) where the defendant is a student. The defendant
 24 understands that he must comply with all the registration requirements contained in SORNA. 42

1 U.S.C. § 16901 *et. seq.* The defendant further understands that the requirements for registration
 2 include, but are not limited to, providing defendant's name, residence address, and the names and
 3 addresses of any places where the defendant is or will be an employee or a student.

4 The defendant further understands that the requirement to keep the registration current
 5 includes, but is not limited to, informing at least one jurisdiction in which the defendant resides, is
 6 an employee, or is a student no later than three business days after any change of defendant's name,
 7 residence, employment, or student status. The defendant has been advised, and understands, that
 8 failure to comply with these obligations subjects the defendant to an additional prosecution for
 9 failure to register as a sex offender under 18 U.S.C. § 2250(a).

10 **XIII. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

11 Before or after sentencing, upon request by the Court, the United States, or the Probation
 12 Office, the defendant will provide accurate and complete financial information, submit sworn
 13 statements, and/or give depositions under oath concerning his assets and his ability to pay. The
 14 defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will
 15 release funds and property under his control in order to pay any fine, forfeiture, or restitution
 16 ordered by the Court.

17 **XIV. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

18 A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

- 19 1. He has read this Plea Agreement and understands its terms and conditions;
- 20 2. He has had adequate time to discuss this case, the evidence, and this Plea
 21 Agreement with his attorney;
- 22 3. He has discussed the terms of this Plea Agreement with his attorney;
- 23 4. The representations contained in this Plea Agreement are true and correct,
 24 including the facts set forth in Section IV; and

1 5. He was not under the influence of any alcohol, drug, or medicine that would
2 impair his ability to understand the Agreement when he considered signing this Plea Agreement
3 and when he signed it.

4 The defendant understands that he alone decides whether to plead guilty or go to trial, and
5 acknowledges that he has decided to enter his guilty plea knowing of the charges brought against
6 him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The
7 defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced
8 or threatened him to enter into this Plea Agreement.

9 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly and
10 expressly waives: (a) the right to appeal any sentence imposed within or below the applicable
11 Sentencing Guideline range as determined by the Court; (b) the right to appeal the manner in which
12 the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and, (c) the right
13 to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture.

14 The defendant also knowingly and expressly waives all collateral challenges, including any
15 claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court
16 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
17 counsel.

18 The defendant reserves only the right to appeal any portion of the sentence that is an upward
19 departure from the Sentencing Guidelines range determined by the Court.

20 The defendant acknowledges that the United States is not obligated or required to preserve
21 any evidence obtained in the investigation of this case.

22 C. Removal / Deportation Consequences. The defendant understands and
23 acknowledges that if he is not a United States citizen, then it is highly probable that he will be
24 permanently removed (deported) from the United States as a consequence of pleading guilty under

the terms of this Plea Agreement. The defendant has also been advised if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and will not be allowed to return to the United States at any time in the future. The defendant desires to plead guilty regardless of any immigration consequences that may result from his guilty plea, even if the consequence is automatic removal from the United States with no possibility of returning. The defendant acknowledges that he has specifically discussed these removal / deportation consequences with his attorney.

XV. ADDITIONAL ACKNOWLEDGMENTS


This Plea Agreement resulted from an arms-length negotiation in which both parties bargained for and received valuable benefits in exchange for valuable concessions. It constitutes the entire agreement negotiated and agreed to by the parties. No promises, agreements, or conditions other than those set forth in this agreement have been made or implied by the defendant, the defendant's attorney, or the United States, and no additional promises, agreements, or conditions shall have any force or effect unless set forth in writing and signed by all parties or confirmed on the record before the Court.

DANIEL G. BOGDEN,
United States Attorney

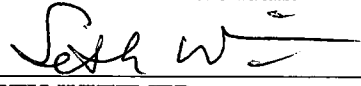
DATE 2.23.17


RICHARD ANTHONY LOPEZ
Assistant United States Attorney

DATE 2-23-17


MICHAEL D. PARIENTE, ESQ.
Counsel for the Defendant

DATE 2-23-17


SETH WITTNER
Defendant